

EXHIBIT D



Allianz Global Corporate & Specialty®

March 14, 2019

Via Email and U.S. Mail, Return Receipt Requested

Mr. Greg Skorheim
Claims Resolution Services, LLC
3808 109th Ave. SE
Snohomish, WA 98290

Re:	Insured:	Kunde Enterprises, Inc.
	Claim No:	00517300019
	Policy No:	MZX80977326
	Date of Loss:	10/9/17
	Loss Location:	9825 Sonoma Highway, Kenwood, CA
	Insuring Co.:	National Surety Corporation

Dear Mr. Skorheim,

This letter concerns the smoke damage to grapes/wines portion of claim number 00517300019 (the "Claim") under National Surety Corporation ("National") insurance policy number MZX80977326 (the "Policy") issued to Kunde Enterprises, Inc. dba Kunde Family Estate ("Kunde") arising out of wildfires which occurred in Sonoma and Napa Counties starting on October 9, 2017.

On October 9, 2018, National advised Kunde that there was no coverage for the claimed smoke damage to grapes on the vine since "growing plants and crops" are not insured property under the Policy's Property-Gard Select Real and Personal Property Coverage form number 190001 05 94R, section C(1). Further, National advised that there is only coverage under the Policy's Basic Extensions of Coverage for Wineries form number 190092 05 06, section III(D)(1) for damage to "stock" and "wine product" during production if the damage was caused by or resulted from mechanical or electrical breakdown or power failure, neither which occurred here. The letter also cited to other Policy terms and conditions supporting the denial of the Claim.

Your October 22, 2018 email appeared to be request that National reconsider its denial of coverage for the smoke damage to grapes asserting that the damage to the grapes did not occur in the vineyard, but rather during processing and therefore the damage was to insured property. In response, National sent correspondence requesting additional information. Kunde responded on



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December 24, 2019. National Requested additional information which Kunde provided on February 4 and February 12, 2019.

Based on the review and analysis of this new information by National's consultants and National's own investigation, National has determined that the Policy provides coverage for smoke tainted wines on the Watch List made from grapes harvested prior to the wildfires. However, we regret to inform you that there is no coverage under the Policy's terms and conditions for the Fire Lot wines whose grapes became smoke tainted while still on the vine because growing crops are not insured property.

Grapes growing on the vine at vineyards owned by Kunde were exposed to heavy smoke due to the Nuns wild fire starting on October 9, 2017. Kunde submitted two grape samples from two separate Kunde estate blocks to ETS, a winery consulting and testing company, for analysis of smoke taint. According to the insured's employees, due to the high demand for testing following the fires, only two samples were allowed to be tested. The testing was limited to the "free" form of two smoke taint marker compounds, Guaiacol and 4-Methylguaicacol. One sample was from a block nearest the actual fire and one slightly further away from the fire. The samples were submitted to ETS on October 16th and the results were reported back on October 25th. While the grapes from the block nearest the fire were not picked, the remaining smoke exposed fruit was harvested from October 20 to October 30, 2017. The ETS testing showed very low levels of free Guaiacol and 4-Methylguaicacol. Kunde proceeded to process the harvested grape lots into wine. Kunde processed 30 additional lots which were exposed to smoke while still on the vine during the wild fire. These lots were either Kunde grapes or grapes purchased from third party vineyards. Kunde refers to these 32 wines as the "Fire Lot" wines.

Additionally, Kunde advised that certain lots of grapes were picked in the weeks before the fire (either from estate blocks or from third party vineyards), but were crushed and fermented while there was still smoke from the fire in the vicinity of the winery production facility. Kunde refers to these 21 lots as "Watch List" lots. Following fermentation, while the wine was still in the tanks, Kunde concluded that certain of the Fire Lot and Watch List wines had smoke taint. In Kunde's opinion, the smoke taint is not from smoke exposure while the grapes were on the vine, but rather due to the harvested grapes being exposed to the smoke that infiltrated the winery processing facility during production. Kunde's conclusion regarding the timing of the smoke damage is based on the ETS testing of the "free" forms of smoke taint markers Guaiacol and 4-Methylguaicacol for the two grape samples sent to ETS on October 16th. ETS did not test for the "bound" form of Guaiacol and 4-Methylguaicacol.

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On July 2, 2018, Kunde submitted a claim for \$3,768,494.25 in smoke tainted damage to the 32 Fire Lot wines on July 2, 2018.¹ This amount was broken down in to three categories: Damaged Wine – Retail Value Less Saved Expenses (\$864,436.18); Damaged Wine – Wine Club Value Less saved Expenses (\$1,785,882.09); and Damaged Wine – Wholesale Value Less Saved Expenses (\$1,118,175.98).

Allianz retained winemaker Chris Markell of Foxridge Wine Consulting to review the ETS testing and assess Kunde's claims. Mr. Markell submitted 8 of the Fire Lot wines and 4 of the Watch List wines for testing with Vinquiry/Enartis. He also issued three separate reports (which were previously provided to Kunde), each of which concluded that based on current scientific findings, the testing for the free form of Guaiacol and 4-Methylguaiacol by ETS was not sufficient to demonstrate that the Fire Lot grapes were free from smoke taint when they were brought to the winery for processing. This is because during a wildfire, the smoke contains aroma compounds called volatile phenols. In the vineyard, these compounds can permeate the grape skins and rapidly bond with the sugars inside the grape to form molecules called glycosides. This process, called glycosylation, renders the phenols no longer volatile, meaning their smokiness cannot be detected by smell, taste or certain testing. Thus, once the phenols are bound to the sugars, the volatile phenols are not detectable and cannot be measured by testing for the "free" form of the compounds because they are bound to the glycosides. However, once the grapes are fermented, the acidity in the resulting wine will begin to break these bonds, rendering the phenols volatile once again and the wine will exhibit a smoke taste. Therefore, according to Mr. Markell, testing for the "free" form of these compounds after they have bound with the sugars will fail to positively identify the bound form of the phenols. Thus, even though the testing for the "free" form of the markers was negative, the grapes could still be contaminated with the bound form of Guaiacol and 4-Methylguaiacol, but the compounds will not express themselves until they are unbound during fermentation due to hydrolyzation which causes them to become odorant.

Following Kunde's request that Allianz reconsider the claim, Allianz retained Phillip Crews, PhD, a Distinguished Research Professor of Chemistry at the University of California, Santa Cruz. In addition to his marine bioorganic chemistry research, Dr. Crews created a course entitled the "Chemistry of Wine," is the owner and winemaker of Pelican Ranch Winery and is a member of the American Society of Enology and Viticulture.

¹ National has previously paid on Kunde's claims under the Policy for a business personal property loss (including internet repair and purchase of a generator) of \$29,147.54 and for abatement and mitigation costs of \$14,087.45 before application of the \$10,000 deductible and business income and extra expense of \$183,299.85.



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Dr. Crews reviewed the ETS and Vinquiry/Enartis testing, the additional information provided by Kunde and the reports of Chris Markell. Pursuant to the enclosed report, Dr. Crews concluded that of the 32 Fire Lot wines, 22 exhibited definite Smoke Taint Assessment Impact (“STAI”) and one had probable STAI (See enclosed Analysis of Smoke Taint Effects to Kunde Premium Wines from 2017 Wildfires in Northern California (“Crews Report”), section A 8.2 and Appendix Table 1). Of the 21 Watch List wines, Dr. Crews concluded that 11 had definite STAI and four were probable (Crews Report, Section A 8.3 and Appendix Table 2). Dr. Crews also concluded that the smoke taint chemical process initiated when the grapes were on the vine for the 32 Fire Lot wines. Dr. Crews observed that the smoke taint to the 15 Watch List wines cannot be explained based on scientific principles or in peer-reviewed literature regarding smoke taint.

The Policy’s **Property-Gard Select Real and Personal Property Coverage Section 190001 05 94** provides in pertinent part:

A. Covered Causes of Loss

This Coverage Section insures all risks of direct physical loss or damage, except as excluded or limited elsewhere in this Coverage Section, provided such loss or damage occurs during the term of this policy, to covered property at the location(s) described in the Declarations.

B. Property Insured

Unless otherwise excluded or limited elsewhere in this Coverage Section, we insured the following property while on the **premises** at the locations(s) described in the Declarations, including personal property in the open (or in a vehicle in the open) within 1,000 feet thereof:

* * *

If this Coverage Section covers personal property, it covers:

1. Business personal property which you own, and interest in and legal liability for personal property owned by others in your care, custody or control. . . .

* * *



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C. Property Not Insured

This Coverage Section does not insure any of the following property, unless specifically covered by the Declarations or by endorsement to this Coverage Section:

1. Land, water, growing plants and crops outside of buildings, standing timber or outdoor trees, shrubs, lawns;

* * *

11. Property which is more specifically described and covered under this policy or any other policy.

D. Exclusions

* * *

2. This Coverage Section does not insure against loss, damage or expense caused by or resulting from the following:

* * *

3. This Coverage Section does not insure against loss, damage or expense caused by or resulting from the following. But if loss or damage from a **covered cause of loss** results, we will pay for that resulting loss or damage.

* * *

- c. Shrinkage, evaporation, leakage of contents, change in flavor or texture or finish, decay or other spoilage;

* * *

- e. Loss attributable to manufacturing or processing operations which result in damage to stock or materials while such stock or materials are being processed, manufactured, tested or otherwise being worked upon;



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* * *

Growing plants are not property insured under the Policy. Therefore, there is no coverage available for the Fire Lot wines because the smoke taint chemical process first occurred while the grapes were still on the vine and came in contact with the wild fire smoke.

The grapes harvested before the fire from the Kunde vineyards and the grapes purchased from other non-Kunde vineyards and located at the insured winery location are insured property because they are business personal property which Kunde owns. However, Exclusion D(3)(c) excludes coverage for any loss, damage or expense caused by or resulting from “change in flavor or texture or finish, decay or other spoilage.” Since the smoke in the winery is alleged to have caused a smoke tainted taste to the wines, any coverage for smoke damage to the harvested grapes would be excluded under the Real and Personal Property Coverage form as a change in flavor or other spoilage under Exclusion D(3)(c). Therefore, there is no coverage for smoke taint damage to the estate grapes and the sourced grapes picked before the fire under the Real and Personal Property Coverage Section form.

The **Property-Gard Select - Basic Extensions of Coverage for Wineries 190092 05 06** provides as follows:

If **0** appears in the Schedule of this Endorsement, or in the Declarations applicable to this Endorsement, no coverage is provided for the described coverage.

If **N/A** is shown for a described coverage or the described coverage does not have a corresponding Limit of Insurance shown in the Schedule of this Endorsement, or in the Declarations applicable to this Endorsement, no coverage is provided for the described coverage.

If **combined** appears for a described coverage under the **Combined Limit** in the Schedule of this Endorsement, or in the Declarations applicable to this Endorsement, the Limit of Insurance for the described coverage will be appear under the **Combined Limit of Insurance** as shown in the Schedule of this Endorsement or in the Declarations applicable to this Endorsement.

If **N/A** appears for a described coverage under the **Combined Limit** in the Schedule of this Endorsement, or in the Declarations applicable to this Endorsement, the described coverage is not available for inclusion in the **Combined Limit**.



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If **Included** appears in the Schedule of this Endorsement, the applicable Limit of Insurance is specified in the Declarations of this policy.

Unless otherwise indicated, the Coinsurance Additional Condition does not apply to coverage provided by this Endorsement.

- I. The following exclusion is added to any coverage part, coverage form, coverage section, coverage provision, extension of coverage, additional coverage, coverage enhancement, or amendatory endorsement attached to this policy:

Except as provided for within the individual Extensions of Coverage contained in Section III. of the Property-Gard Select - Basic Extensions Of Coverage Endorsement For Wineries - 190092, we do not cover any loss of Business Income, Extra Expense, Expediting Expense, Rental Value, Rental Cost Reimbursement or other consequential loss when the Business Income, Extra Expense, Expediting Expense, Rental Value, Rental Cost Reimbursement or other consequential loss is the result of:

- A. Loss or damage to any property added to the policy by the Property-Gard Select - Basic Extensions Of Coverage Endorsement For Wineries - 190092; or
- B. Loss or damage that is caused by or results from a cause of loss that is added under any extension of coverage or additional coverage contained within the Property-Gard Select - Basic Extensions Of Coverage Endorsement For Wineries - 190092.

* * *

- III. Section F., Extensions of Coverage, of the Property-Gard Select Real and Personal Property Coverage Section - 190001 is amended to include the following:

* * *

- D. Damage During Production



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1. If you use reasonable care to maintain all heating, cooling or humidity control equipment in proper operating condition, we will pay for direct physical loss of or damage to **stock** and **wine product** insured under this policy during production at the **premises** described in the policy Declaration caused by or resulting from:
 - a. Mechanical or electrical breakdown of heating, cooling or humidity control equipment which is owned or used by you; or
 - b. A power failure beyond your control which causes a change in temperature or humidity.
2. The most we will pay under this Extension of Coverage is the Limit of Insurance shown in the Schedule that applies to this Endorsement for Damage During Production.

* * *

VIII. The following are added to section N., Definitions of the Property- Gard Select Real and Personal Property Coverage Section:

- D. **Harvested fruit** means grapes that have been removed from the vine to be used in producing **wine products**.

* * *

J. **Wine product** means:

1. Juice from **harvested fruit**;
2. Wine in any state of fermentation;
3. Wine in tanks, barrels or bottles or in the process of being placed in tanks, barrels or bottles;
4. Products you make from wine.

There is no coverage under the Basic Extensions of Coverage for Wineries form because there was no direct physical loss of or damage caused by or resulting from mechanical or electrical breakdown of heating, cooling or humidity control equipment or a power failure beyond the insured's control which causes a change in temperature or humidity. The claimed smoke taint



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was allegedly caused by exposure of the grapes or wine product in the winery to the volatile phenols and was not due to changes in temperature or humidity.

Property-Gard Select - Perishable Stock Coverage 190101 06 11 provides in pertinent part as follows:

This endorsement modifies insurance provided under the Property- Gard Select-Basic Extension of Coverage for Wineries -190092 05 06.

* * *

Section III.L of the Property-Gard Select - Basic Extensions of Coverage for Wineries - 190092 05 06 is deleted and replaced with the following:

L. Perishable Stock

1. The following is added under Paragraph B., Property Insured, as respects covered personal property:

Perishable stock

We will pay for direct physical loss or damage to **perishable stock** caused by or resulting from **spoilage** while at a **premises** described in the Declarations of this policy.

Spoilage means the act of damage to or contamination of **perishable stock**. **Spoilage** of **perishable stock** includes any impurity caused by contact or mixture with a foreign substance. Foreign substances include **wine products** which are not meant to be a part of the wine recipe or blend. **Spoilage** does not mean contactor mixture with any **wine products** intended to be a part of the wine recipe or blend.

2. The following are deleted from Section D., Exclusions, of the Property-Gard Select Real and Personal Property Coverage Section 190001 with respect to your **perishable stock**:

* * *



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- c. d.3.c. (Shrinkage, evaporation, leakage of contents, change in flavor or texture or finish decay or other spoilage); and
- d. d. D.3.e. (Loss attributable to manufacturing or processing operations which result in damage to stock or materials while such stock or materials are being processed, manufactured, tested or otherwise being worked upon).

* * *

4. The following are added to Section D.2, **Exclusions**, of the Property-Gard Select Real and Personal Property Coverage with respect to your **perishable stock**:

- A. Physical injury, disease or disorder occurring during growing;

* * *

- 6. The most we will pay in any one occurrence for loss or damage covered by this Extension of Coverage is the Perishable Stock – Per Occurrence Limit of Insurance shown in the Schedule that applies to this Endorsement.

The most we will pay for all occurrences in any one-policy period for loss or damage covered by this Extension of Coverage is the Perishable Stock-Annual Aggregate Limit of Insurance shown in the Schedule that applies to this Endorsement.

- 8. The definition of **perishable stock** in Section VIII.F. of the Property-Gard Select - Basic Extensions of Coverage for Wineries - 190092 is deleted and replaced with the following:

F. **Perishable stock** means personal property maintained under the controlled conditions required for its preservation and susceptible to loss or damage if the controlled conditions change. With respect to coverage provided by this endorsement, **perishable stock** includes **wine products**.

- 9. This Endorsement is otherwise subject to all of the terms, conditions, provisions and stipulations of the policy to which it is attached.



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As noted in Dr. Crews' report, the exact mechanism for the smoke taint to the Watch List wines cannot be determined. Therefore, the evidence shows that there is coverage under the Perishable Stock Coverage form for the 15 Watch List wines with a definite or probable STAI because they experienced direct physical loss or damage during processing due to contamination with an impurity. There is no coverage for damage to the Fire Lot wines as the Perishable Stock Coverage form excludes coverage for physical injury, disease or disorder occurring during growing. Further, since the Fire Lot wines were first smoke tainted in the vineyard, therefore, there is no damage to insured property.

The limit for coverage for perishable stock under this form is \$1 million (Property-Gard Select Declarations, PR – 10.)

The Policy includes the following **Property-Gard Select Wine Products Valuation and Amendatory Endorsement**, form number 190091 11 06 which provides as follows:

I. A. If

1. There is no entry in the Schedule of this Endorsement or in the Declarations applicable to this Endorsement; or
2. **0** appears in the Schedule of this Endorsement or in the Declarations applicable to this Endorsement;

then there are no special valuation provisions for **harvested fruit, staged release wine products** or **library wine products**.

* * *

II. The Property –Gard Select Real and Personal Property Coverage – Section 190001 is amended as follows:

A. Item 8., **stock** of section N. **Definitions**, is deleted and replaced with the following:

8. **Stock** means merchandise held in storage or for sale, raw materials and in-process or finished goods that are not included within the definition of **wine products**. **Stock** includes supplies used in packing or shipping of any of these, including the packing and shipping of **wine products**.



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Item 3., **stock**, of Section K., **Valuation**, will not apply to any **wine product**.

B. The following is added to Section N., **Definitions**:

1. **Current release selling price** means the selling price, at the time and place of loss, of your youngest vintage **wine product** that is no longer **in process**. If such **wine product** is no longer for sale at the time and place of loss, then we will use the last selling price that was in effect for such **wine product**
2. **Harvested fruit** means grapes that have been removed from the vine to be used in producing **wine products**.
3. **In process** means the **wine product** by **varietal** and vintage, you have not released for sale.

If any portion of the **varietal** and vintage of the **wine product** has been released for sale, then all of that **varietal** and vintage will fall outside of this definition for **in process**.

* * *

- 6 **Varietal** means a **wine product** made principally from one variety of grape and carrying the name of that grape.
7. **Wine product** means:
 - a. Juice from **harvested fruit**;
 - b. Wine in any state of fermentation;
 - c. Wine in tanks, barrels or bottles or in the process of being placed in tanks, barrels or bottles;
 - d. Products you make from wine.

C. Section K., **Valuation**, of the Property-Gard Select Real and Personal Property Coverage Section - 190001 is amended to include the following valuation with respect to **harvested fruit**:



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Harvested fruit will be valued at the agreed value per ton as shown in the Schedule of this Endorsement or the Declarations as applicable to this Endorsement. If no valuation for **harvested fruit** is indicated, **harvested fruit** will be valued as **stock**.

D. Section K. **Valuation**, of the Property-Gard Select Real and Personal Property Coverage Section - 190001 is deleted as respects to **wine products** and replaced by the following;

1. Your **wine products** will be valued as follows:

* * *

b. **In process wine product** will be valued at the lesser of:

(1) (a) **Current Release Selling Price**

We will use the **current release selling price** of your **wine product** based on the same **varietal**.

If the loss to your **in process wine product** involves a **varietal** that is sold through various distribution methods, then we will determine the value of your **in process wine product**, by **varietal**, as follows:

- i. We will multiply the percentage of **wine product** that is sold by each distribution method against such distribution method's **current release selling price**
- ii. We will add the values determined in i. above.

The sum determined in ii. above will be the value of your **in process wine product** for the **varietal**.

(b) When a **current release selling price** for your **wine product** of the same **varietal** is not available, we will use the average **current release selling price** of wineries offering a **varietal** similar to your lost or damaged **wine product** and produced by the same winemaker.

If the winemaker that produced your **wine product** did not produce wines for other wineries, then we will use the average of the **current release selling price** of that



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varietal charged for by wineries whose portfolio of wines are similar in price and quality to your **wine products**.

Or

(2) Replacement Cost

The cost to replace the **wine product** with a **wine product** of like kind, quality and state of fermentation, if replaceable.

* * *

- e. For all **wine products** you replace, we will not pay more than the amount you actually pay to replace the **wine product**.

* * *

- 3. Item 3., **stock**, of Section **K., Valuation**, will not apply to any **wine product**

* * *

- F. Item 3.e. of Section D., **Exclusions**, of the Property- Gard Select Real and Personal Property Coverage Section - 190001 is deleted and replaced with the following

- e. Loss attributable to manufacturing or processing operations which result in damage to stock, **harvested fruit, wine product** or materials while such stock, **harvested fruit, wine product** or materials are being processed, manufactured, tested or otherwise being worked upon;

III, The following is added to the Property-Gard Select Loss Conditions - 190003

Salvage of Your Wine Products

If any of your recovered **wine product** has a salvage value, then we shall control the disposition of such salvage. If the **wine product** bears your name or trademarks, then we will not dispose of **wine product** by re-introduction



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into the market without your permission.

* * *

On July 2, 2018, Kunde submitted a Summary of Loss Elements for damaged Wine which was categorized by retail value, wine club value and wholesale value, less saved expenses. It does not appear that Kunde calculated this portion of the loss pursuant to the above valuation provisions. Please submit a revised valuation calculation for the following Watch List wines:

KU17CSKUND-337;B
KU17MBKUND-9/2;B
KU17ZNKUND-4ZN03;B
KU17ZNSOCO-SOD/LER
KU17CSKUND-BLK13;B
KU17ZNKUND-4/OLD;B
KU17MEKUND-1;B
KU17MEKUND-16;B
KU17CSKUND-CL15;B
KU17ZNKUND-4ZNF;B
KU17ZNKUND-8;B
KU17ZNKUND-8/13;B
KU17SGKUND-5
BKU17CSKUND-34;B
KU17CSKUND-14;B

Thank you for your cooperation in this matter. If you believe this claim has been incorrectly denied, please provide additional information for our review and consideration.

If you believe this claim has been wrongfully denied, or rejected, you may have the matter reviewed by calling the California Department of Insurance at 1(800) 927-4357, or by writing to the:

California Department of Insurance
Consumer Communications Bureau
300 South Spring Street, South Tower
Los Angeles, CA 90013



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Please also refer to the following sections of the **Property-Gard Select – General Conditions – 190002 05-94** which state in part:

B. Legal Action Against Us

No one may bring a legal action against us under this Coverage Section unless:

1. There has been full compliance with all of the terms of this Coverage Section; and
2. The action is brought within 2 years after the date on which the direct physical loss or damage occurred.

The foregoing requests should not be considered a waiver of National's prior denial of the claim. National continues to reserve all of its rights under the terms and conditions of the Policy.

Sincerely,

Christopher Anderson
Regional General Adjuster
National Surety Corporation
One of the Allianz Companies

cc: Sweet & Baker Ins. Brokers
Attn: Carol Johnson
44 Second Street
San Francisco, CA 94105